

February 1, 1994

### **PECFA UPDATE #3**

DEAR PECFA CONSULTANTS & FUND PARTICIPANTS:

Enclosed is the third PECFA UPDATE. Since PECFA UPDATE #2 dated October 20, 1993, several procedures have not been followed. Old business will be discussed first and new business second.

### **OLD BUSINESS**

**CLAIM NUMBERS:** Specific site correspondence must have the PECFA Claim Number and/or the nine (9) digit zip code. Effective February 1, 1994, the department **shall return** correspondence, without comment, if the PECFA Claim # and/or the nine (9) digit zip does not accompany the correspondence. Correspondence returned could result in the delay of the project. If the PECFA claim number is unknown but, a file has been established call (608) 267-3753 to request the PECFA claim number.

**PERMANENT RULE:** The effective date is March 1, 1994. The department expects copies of the ILHR 47 permanent rule to be available sometime in March from Document Sales, (608) 266-3358.

**PROOF OF PAYMENT:** Proof of payment must be cancelled checks or money orders. The department has never considered "barter", "credits" or "cash receipts" as an absolute proof of payment. Costs not supported by canceled checks or money orders at time of the claim submittal shall not be reimbursed by the program. Be sure that all canceled checks or money orders are submitted with the claim for any remedial costs claimed.

**REPORTS:** All report(s) describing activities for costs submitted shall accompany the claim. If the report is submitted separate from the claim, the report(s) may be returned. If the report(s) must be requested by the department, the claim process may be delayed.

## NEW BUSINESS

**BIO:** The initial bio assessment or bio assay has been determined by the department to be an  
**ASSAYS:** investigative activity, part of the \$40K investigation cap and should not be included in the remediation cost estimates.

**COSTS:** Costs submitted for reimbursement after the DNR's signature date on the Form 4  
**SUBMITTED:** may not be reimbursable by the Fund. Be sure **all** invoices are submitted and **paid** by the claimant prior to the date of DNR's signature. This is very important when the claim is a final and/or completed claim. If the claim is not final these costs should be submitted on the next claim.

**ELIGIBLE/** Actual costs incurred after January 1, 1993, for travel, meals and lodging which  
**NON-ELIGIBLE** are in excess of state travel rates are **non-eligible** costs. A listing of state  
**COSTS:** travel and meal rates may be obtained by writing to the department, Linda Baldrige, Safety and Buildings Division, P.O. Box 7969, Madison Wisconsin 53707. Examples include; Breakfast, \$6.40, Lunch, \$6.85, Dinner, \$14.50, Car Mileage, \$0.26/mile and Van/Pick-up Mileage, \$0.45/mile, Lodging, \$49.00/night (excluding sales and/or room taxes).

Costs that are incurred after March 1, 1994, and are associated with general program support and office operations are **non-eligible** costs. These costs include but are not limited to: telephone charges, photocopying, faxes, paper and printing, postage, hand tools, personal protective equipment, computer equipment, CAD equipment and software charges. These costs are expected to be included in staff hourly rates. For the purposes of this section, HnU meters, PID's, FID's, electronic equipment and sampling kits are not considered hand tools.

**FORM I:** The PECFA Form 1 is required with all claims submitted. All applicable **original** (no photocopies) PECFA forms must be submitted with each PECFA claim.

**HOME** Effective February 1, 1994, the department will follow ILHR 47 permanent rule  
**HEATING:** regarding consultant proposals and bidding for residential heating oil sites. ILHR 47.33 will state;

Except for home oil tank owners, the purchase of consulting and commodity services, not already covered by a detailed written contract, shall conform to the proposal and bidding procedures in this section.

**ILHR 10:** Questions involving petroleum tank removal, installation, registration and upgrades (ILHR 10) should be directed to the Tank Inspectors in your area. A map and area contacts are *attached*.

**INITIAL CLAIM**  
**CALLS:** The Initial Claim Call Form must be returned by mail, not FAXED.

**INVESTIGATION CAP:** The department has determined that the \$40K investigation cap applies to a site (all occurrences) while the site is in active investigation/remediation. If the cost to investigate multiple occurrences is estimated to exceed \$40K, ILHR 47.335(2) allows for exceedence of the established maximum reimbursable amount for investigation activities. When all of the remedial activities are completed (closed) and a new investigation is started, a new \$40K investigative cap is established. Questions regarding the \$40K investigative cap should be directed to Mr. Stanley Senger, (608) 264-8766.

**LONG-TERM MONITORING:** ILHR 47.33 states;

(3) LONG-TERM MONITORING AND LONG-TERM OPERATION AND MAINTENANCE. At the point that a site is to enter long-term monitoring or long-term operation and maintenance, a cost detail shall be developed which separately identifies the cost of consulting and other required services.

Remedial alternatives approved thus far have not included long-term monitoring. The department has determined that long-term monitoring and long-term operation and maintenance **usually** begins after one (1) year of operation of the remediation system.

**PHONE CALLS:** Due to the large backlog of claims to be processed, the department shall answer consultant questions during the hours of 3:00-4:25PM only! Emergency Action approval calls will continue to be answered during regular office hours. Time available to process claims has been severely compromised due to the large number of phone calls that the staff receives. The staff asks that callers have the site's PECFA Claim # and a copy of ILHR 47 emergency/permanent rule available.

## **PROGRESS**

**PAYMENTS:** The department's statement on progress payments is *attached*.

**REGISTRATION:** Did your peers (consultants) receive this PECFA UPDATE #3? If not, your peers are not PECFA registered consultants or their addresses registered with the department are incorrect. Costs incurred by an unregistered consultant or consulting firm may not be reimbursed. Please read;

**ILHR 47.40** ADMISSION TO PARTICIPATE,  
**ILHR 47.405** APPLICATION FOR ADMISSION TO PARTICIPATE and  
**ILHR 47.41** METHOD OF DISQUALIFICATION.

**REMEDIAL ALTERNATIVES:** Remedial alternatives and/or remediation estimates must be submitted **prior** to the implementation of the remedial action plan. If department approval is needed, implementation of the remedial action plan should not begin until correspondence with the department is complete. If the remedial action is implemented prior to the submittal of the cost estimates, the department may disqualify consultant and/or consulting firm registration(s) and may not reimburse the remediation costs.

Effective February 1, 1994, the department will follow ILHR 47 permanent rule regarding the submittal of remedial alternatives.

If the selected remedial alternative is estimated to be **greater than** \$80,000, the comparison of alternatives shall be submitted to the department (DILHR). The department (DILHR) shall review and provide written approval/denial of the selected remedial alternative cost **prior to the start** of remedial activities.

If the selected remedial alternative is estimated to be **less than** \$80,000, submittal of the comparison of alternatives and **written** approval/denial by the department is **not** required. This includes residential home heating oil tanks. However, remedial cost estimates shall be submitted to the department **prior to the start** of remedial activities. The department (DILHR) will not provide a written response to remedial cost estimates if the selected remedial alternative is estimated to be **less than** \$80,000.

**STATEMENT OF ELIGIBILITY:** A statement of eligibility will not be sent to the responsible party if a PECFA file and claim number has not been established. The Initial Claim Call Form and the request for a statement of eligibility may be sent to the department at the same time. The claimant or representative must sign the request for a statement of eligibility. Tank registration forms should be sent to Tank Permitting rather than PECFA!

**STOCKPILED SOILS:** Costs associated with stockpiled soils (including excavation, trucking, lab analysis and remediation) prior to DNR notification of a release and/or prior to establishment of reimbursable maximum [ILHR 47.33(2) REMEDIATION] shall be considered to be activities associated with the tank removal and shall not be reimbursed.

**TANK SYSTEM UPGRADED?** The department's position statement is *attached*.

The staff hopes this update is helpful to you and your clients. Address comments and suggestions for future topics to the staff by letter.

Thank you,

The PECFA Staff

December 22, 1993

Many states that have programs that help owner/operators in the remedial efforts of petroleum cleanups do not allow progress payments. The PECFA program has always maintained a "milestone" where reimbursements could be claimed. As the program matured many individuals requested partial reimbursement awards of the required PECFA progress payment milestones and this is one of the reasons we now have a six month backlog of remedial claims under the program. Instead of getting the money to the claimants faster, through the partial progress payment process, it has actually extended the progress payment timeframes.

The ILHR-47 Emergency Administrative Rule prohibits the PECFA staff from processing "progress payment" claims that have not completed a phase of the remediation prior to submittal of the "progress payment" claim. Claims received by the Department that have not completed a "progress payment" milestone shall be returned to the claimant and then may be DNR approved and resubmitted when the "progress payment" milestone is achieved. Partial sign-offs by the DNR, of remedial phases, cannot be processed. Under ILHR 47.35 (2) it states:

2. Progress payments may be made to entities who have not met or do not have the ability to meet the test for self-insurance included in s. ILHR 10.82 (tangible net worth of \$20,000,000 or more). All requests for progress payments shall be accompanied by a completed and signed DNR Site Investigation and Remedial Action Plan Review form (SBD-8069 - Form #4). The department may conduct field or financial audits or inspections to verify completion of each phase of remediation prior to payment.

3. Progress payments may be made only at the following times:

- a. Completion of an emergency action;
- b. Completion of a site investigation and remedial action plan;
- c. Completion of remedial action activities; and
- d. Annually for maintenance, monitoring and operation costs.

(b) Other interim payments. In addition to the progress payments identified in subd. 3., the department will also make awards after DNR approval at the following points.

1. When \$100,000 of remedial expenses have been incurred for a site.
2. If the department fails to approve reimbursement above the \$40,000 cap for the completion of a site investigation and remedial action plan and the lender terminates their funding relationship with the responsible party and requests reimbursement.

All invoices submitted to the program must be adequately itemized and proof of payment must be also be submitted for any cost claimed. A claimant cannot just submit a paid invoice to the program for reimbursement. Certain remedial "cleanup milestones" must be achieved before each PECFA claim submittal. The PECFA progress payment claim submittal schedule is as follows:

A claimant can submit an application for progress payment if certain procedures are completed, DNR approved and paid. Claimants making application for progress payment must have either, (a) completed an emergency action (abatement of an imminent public health hazard). (b) Completed a site investigation and DNR approved remedial action plan or put a cleanup operation in place. The PECFA program cannot make reimbursement awards without a signed DNR form #4, from the DNR indicating the successful achievement of one of these remedial milestones. All investigation results and reports must be submitted to the Department of Natural Resources to assist them in the approval of each Form #4 submitted for reimbursement.

Sometimes a claimant involved in a remedial action will get into a situation where further investigation requires modified remedial action plan. This type of situation can occur after a remedial action plan has been previously approved or even reimbursed for. Additional remedial work may progress on the site with a "change order" which the cost must be approved by the Department and a letter from the DNR requesting a modified remedial action plan or remedial activity.

An annual claim can be made for the operation and maintenance associated with long term cleanup of a site. This can be awarded once a year based upon the date the long term remedial action was put into operation.

Under the progress payment portion of the program, "progress" must be DNR approved and forms submitted, with properly itemized invoices, for each requested reimbursement.

The claimant's PECFA claim is important to us. To better understand how the claim is handled, it is important for you to know how our file system works. If a claimant submits a claim without a signed Form #4 (DNR approval form) the claim is placed in a file pending DNR approval. Upon receipt, by the department, of the DNR (original) Form #4, the claim is matched up and placed into a file waiting to be audited. Sometimes the reverse is true and therefore the Form #4 arrives prior to the claim and is then held pending submittal of the claim.

The audit line process does not start until both the completed reimbursement forms, with proof of payment, and DNR Form #4 is received by the Department. The PECFA staff does not have the ability to move PECFA claims ahead in the audit line. They are audited on a strict first in and first out basis.

The speed with which the PECFA program can pay claims is a function of multiple factors. Among these are the numbers of claims received, the size of the claims and the amount of funding provided the Department for the payment of claims. Currently, we have a six month backlog of PECFA claims in the audit line. The Department does not have the ability to move a reimbursement claim ahead in the audit line unless it is a priority claim under ILHR 47.35 which states:

(3) PRIORITY PROCESSING. (a) Emergency remediations. The department may, after determining that an emergency exists, make an award in advance of claims received prior to the emergency claim. The finding of an emergency shall be made based upon an immediate need to protect human health and safety. The finding of an emergency may not be based on financial hardship or indigence of the responsible party or agent. The department shall be the sole determiner of whether an emergency exists and an appeal of the decision to the department is not allowed.

(b) Cost-effective remediations. If a responsible party is able to complete a remediation, at least up to the point of long-term monitoring or where passive bio-remediation is approved by the DNR, and the total costs incurred are equal to or less than \$50,000, the claim may receive priority processing. Claims received under this provision may be processed and awards made before other complete claims, except for claims as described in par. (a).

The Department is unable to move this claim ahead in the audit line. There are many claimants, for reasons to many to mention, have requested their PECFA reimbursement claim moved ahead in the audit line. We have always maintained the first in - first out claim review process.

Miles M. Mickelson  
Bureau of Petroleum Inspection  
and Fire Protection

## NEW AND CLEAN SITES PECFA PROVISIONS

The biennial budget process established two new provisions within the PECFA statute. These provisions eliminate program coverage for some tank systems. The first provision impacts tank systems which meet the EPA's new or upgraded tank system standards. The second provision deals with sites which have been cleaned up or are actively being remediated under the PECFA fund.

These new provisions have resulted in questions and requests for a formal analysis of the changes. This document is intended as a vehicle for answering some of the basic questions which are being received.

### NEW OR UPGRADED SYSTEMS

For the remediation of a release, from a tank system, to be eligible under PECFA (in addition to other program requirements), the release must have come from:

"a petroleum product storage system or home oil tank system that does not meet the performance standards in 40 CFR 280.20 or s. ILHR 10.51, Wis. adm. code, or the upgrading requirements in 40 CFR 280.21 (b) to (d) or s. ILHR 10.52 (2) to (4), Wis. adm. code."

This provision states that a release from a tank system, which meets the EPA standard for being considered a new or upgraded system, is not eligible for reimbursement under PECFA. This provision is effective as of 1/1/94.

For an owner or operator, the important question becomes: Do my tanks systems meet the new or upgraded standard?

To be considered a new or upgraded tank system, the system must have:

- A). A tank which is protected against corrosion
- B). Lines which are protected against corrosion
- C). Spill and overfill prevention equipment

When owners attempt to determine whether the tank system they have meets the requirements of the state and federal rules, special care must be taken in the area of the piping. Many piping systems which were installed prior to the Federal EPA rules used sacrificial anodes in conjunction with simple galvanized piping. This piping does not meet the federal 1998 requirement.



For steel piping to be successfully cathodically protected, the piping must be coated with a dielectric material. A very rare exception to this could occur if the piping was designed by a person who was certified by the National Association of Corrosion Engineers or was a registered professional engineer with education and experience in corrosion control.

The tank systems which meet the new or upgraded tank system standards will, after 1/1/94, have to obtain private insurance in order to comply with the financial responsibility requirements included in the EPA rules and the state code.

## CLEAN OR REMEDIATED SITES

The second major change to the PECFA statute deals with sites which have been cleaned up or are actively being remediated under the PECFA fund.

After 1/1/94, for the remediation of a release from a tank system to be eligible under PECFA (in addition to other program requirements), the release must not originate:

"from a location that is all of the following:

- a. On the same property from which another petroleum products discharge originated that necessitated remedial action activities for which the department issued an award under this section.
- b. Within the area on which those remedial action activities were conducted."

In this context, the term location is determined to be a "petroleum product storage tank system" as defined in the PECFA statute.

This provision excludes from reimbursement a number of situations. It does, however, retain eligibility for most events.

## STILL ELIGIBLE FOR REIMBURSEMENT

1. The continuing costs of a remediation which was identified prior to 1/1/94.
2. The costs of remediation associated with a site which the DNR closed but subsequently required more work on.
3. A remediation on a property where there have been no other remediations for which PECFA provided reimbursement (and the tank system(s) do not meet the new or upgraded standards).
4. A new remediation on a property where there is a current (or previous) remediation if the contaminated areas are separate and distinct (and the tank system(s) do not meet the new or upgraded standards).
5. The costs associated with a continuing remediation even though a non-eligible release occurs within the area of the old remediation (old and new costs must be separated).
6. The costs associated with a new remediation, within the area of a previous PECFA cleanup, if the

new release originated from a different tank system and the system does not meet the new or upgraded standards.

#### NOT ELIGIBLE

1. A new remediation, after 1/1/94, which is within the same area as a previous remediation for which reimbursement was received from PECFA and the release is from the same tank system as the original release which is in remediation or has been remediated. (Also excluded would be a release from a new or upgraded tank system.)

#### WHEN IS A REMEDIATION CONSIDERED TO HAVE BEEN STARTED PRIOR TO 1/1/94

Remediation costs are eligible under PECFA after confirmation of a contamination. For the purposes of the new and clean sites provisions, a contamination must be documented as having been reported to the DNR prior to 1/1/94. Existence of a contamination may be identified by investigative actions, field screenings or an inspection of the site for contamination resulting from a release to the environment.

If contamination is subsequently determined not to exist, the costs of investigation and action after the DNR notification would not be reimbursable.